85-110

Office-Supreme Court, U.S.
FILED
JUL 24 1985
ALEXANDER L. STEVAS,
CLERK

Supreme Court No. _____

In the Supreme Court of the United States
OCTOBER TERM, 1985

George A. Bint,
Appellant,
v.
Creative Forest Products, Employer, and
Maryland Casualty Company, Surety,
Appellees

Edwin W. Dalton,
Appellant,
v.
Creative Forest Products, Employer,
Maryland Casualty Company, Surety, and
State of Idaho, Industrial Special Indemnity Fund,
Appellees

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF IDAHO

Appellees' Motion to Dismiss on the Grounds That Appellants Have Not Raised A Substantial Federal Question

John W. Barrett
Donald D. Saint-Just
Moffatt, Thomas, Barrett & Blanton, Chartered
First Security Building
Post Office Box 829
Boise, Idaho 83701
(208) 345-2334
Attorneys for Appellees
Creative Forest Products and
Maryland Casualty Company

BEST AVAILABLE COPY

29pp

John W. Barrett
Donald D. Saint-Just
MOFFATT, THOMAS, BARRETT & BLANTON, CHARTERED
Post Office Box 829
Boise, Idaho 83701
(208) 345-2334
Attorneys for Appellees
Creative Forest Products
and Maryland Casualty Company

Samuel Kaufman, Jr.
ANDERSON, KAUFMAN, RINGERT & CLARK
Post Office Box 2773
Boise, Idaho 83701
(208) 342-4591

Paul S. Penland
LOJEK, PENLAND & MUNTHER
Post Office Box 199
Boise, Idaho 83701
(208) 344-4566
Attorneys for Appellee State of Idaho
Industrial Special Indemnity Fund

Lynn M. Luker
GOICOECHEA LAW OFFICE, CHARTERED
701 West Franklin Street
Boise, Idaho 83701
(208) 343-0022
Attorney for Appellants
George A. Bint and Edwin W. Dalton

TABLE OF CONTENTS

		Page
I.	TABLE OF AUTHORITIES	iii
II	QUESTIONS PRESENTED BY APPELLANTS AND SUMMARY OF ARGUMENT THAT SUCH QUESTIONS DO NOT PRESENT SUBSTANTIAL FEDERAL QUESTIONS	1
III.	PARTIES	2
IV.	OFFICIAL REPORTS AND OPINIONS	2
V.	RELEVANT STATUTES	3
VI.	STATEMENT OF THE CASE	3
VII.	REASONS FOR DISMISSING APPELLANTS' APPEAL ON GROUND THAT APPELLANTS HAVE NOT RAISED A SUBSTANTIAL FEDERAL QUESTION	5
VIII.	CONCLUSION	21

I.

TABLE OF AUTHORITIES

CASES Page

Asbury Hospital v. *Cass County,*
326 U.S. 207 (1945) 17

Brock v. *Boise,*
95 Idaho 630, 516 P.2d 189 (1973) 4

Cleland v. *National College of Business,*
435 U.S. 213 (1978) 11

Dandridge v. *Williams,*
397 U.S. 471, 486-87 (1970) 10, 14, 21

Geduldig v. *Aiello,*
417 U.S. 484, 495 (1974) 6, 8, 9, 10, 11

Idaho Department of Employment v. *Smith,*
434 U.S. 100 (1977) 8

Jefferson v. *Hackney,*
406 U.S. 535 (1972) 13

Lindsley v. *Natural Carbonic Gas Co.,*
220 U.S. 61, 78 (1911) 6

Lower Vein Co. v. *Industrial Board,*
255 U.S. 144 (1921) 15

Massachusetts Board of Retirement v. *Murgia,*
427 U.S. 307, 314 (1976) 7

Middleton v. *Texas Power & Light Co.,*
249 U.S. 152 (1918) 15

Mountain Timber Co. v. *Washington,*
243 U.S. 219, 238-39 (1917) 6

Richardson v. *Belcher,*
404 U.S. 78 (1971) 14

Schweiker v. *Wilson,*
450 U.S. 221, 234 (1981) 6, 8

State Board of Tax Commissioners v. *Jackson*,
283 U.S. 527 (1931) 17

Wanke v. *Ziebarth*,
69 Idaho 64, 202 P.2d 384 (1949) 4

Weinberger v. *Salfi*,
422 U.S. 749 (1975) 12, 13, 17, 19, 22

Williamson v. *Lee Optical Co.*,
348 U.S. 483, 489 (1955) 9, 14

STATUTES
Idaho Code § 72-439. . . . 1, 3, 4, 5, 16, 17, 18, 19, 21, 22

TREATISES
Larson, *The Law of Workmen's Compensation*
§§ 1-5, 96 (1982) 6

II.

QUESTIONS PRESENTED BY APPELLANTS AND SUMMARY OF ARGUMENT THAT SUCH QUESTIONS DO NOT PRESENT SUBSTANTIAL FEDERAL QUESTIONS.

Appellants have set forth their questions on appeal as follows:

> 1. Does the sixty (60) day exposure requirement for nonacute occupational diseases under Idaho Code Section 72-439 create unreasonable classifications which violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?
>
> 2. Does the sixty (60) day exposure requirement for occupational diseases under Idaho Code Section 72-439 violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution by establishing an irrebuttable presumption?

Appellees respectfully submit that neither question raised by appellants presents a substantial federal question.

As to the first question raised by appellants, this Honorable Court has determined that the applicable standard of review with regard to social and economic legislation is that of the rational basis test. The Idaho Supreme Court employed such a test in examining Idaho Code Section 72-439, and found that the legislature had several reasonable bases for the legislation, and that therefore there was no violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Because the rational basis test is the appropriate test for such legislation and because, as the Idaho Supreme Court found, there were reasonable grounds for the legislation, appellants have raised in their first question no substantial federal question.

As to the second question raised by appellants regarding an alleged "irrebuttable presumption," the legislation-in-question does not in fact contain an "irrebuttable presumption," and appellants' question has no foundation. But assuming only for the sake of argument that the Honorable Court should somehow find the statute contains an irrebuttable presumption, the Court has held in social welfare cases such as the one at bar that it would apply the rational basis test in analyzing the classification created by the presumption. As noted previously, the Idaho Supreme Court applied the rational basis test to the legislation and found several rational bases for the legislation, as shall be discussed in greater detail subsequently. Thus, appellants' second question raises no substantial federal question.

III.

PARTIES

All the parties to this proceeding are listed in the caption of this case.

IV.

OFFICIAL REPORTS AND OPINIONS

As of the writing of this brief, the decisions by the Idaho Supreme Court in these cases have not appeared in the official reports. Copies of these slip opi-

nions of the Idaho Supreme Court dated January 29, 1985, and April 11, 1985, are attached in the Appendix to Appellants' Jurisdictional Statement.

V.

RELEVANT STATUTE

The pertinent provision of Section 72-439 of the Idaho Code challenged by appellants is as follows:

> An employer shall not be liable for any compensation for a non-acute occupational disease unless the employee was exposed to the hazard of such disease for a period of sixty (60) days for the same employer.

VI.

STATEMENT OF THE CASE

Appellants George Bint and Edwin Dalton were exposed to red cedar dust while working at a facility of Creative Forest Products. Both men complained of developing an occupational disease as a result of exposure to the red cedar dust. Both men brought workmen's compensation claims before the Industrial Commission of the State of Idaho. The Industrial Commission determined that the occupational diseases of appellants were "nonacute" based upon the testimony of Dr. Torrington, a medical expert, whose testimony was unrefuted by any evidence. The Commission found that appellants had been exposed to red cedar dust less than sixty (60) days. Because appellants had not met the 60-day exposure requirement of Idaho Code Section 72-439 for *non*acute occupa-

tional diseases, the Industrial Commission denied the claims of appellants.[1]

Appellants appealed the decision of the Industrial Commission to the Idaho Supreme Court where the Idaho Supreme Court found that Idaho Code Section 72-439 did not violate state or federal constitutional provisions concerning equal protection and due process. The Idaho Supreme Court applied the rational basis test to determine the validity of the statute, and it found several rational reasons for the legislation.

On page 17 of their brief, appellants incorrectly assert that the Idaho Supreme Court "made very little effort to come up with any rational basis to support" the statute and that "no legitimate reason was ever pointed out." Contrary to appellants' contentions, the Idaho Supreme Court did point out significant and legitimate reasons for the legislation. The Idaho Supreme Court stated that the "legislature has legitimate interest in seeing that coverage for occupational diseases be kept within reasonable limits and in controlling the financial impact on Idaho industry and consumers." Another reason specified by the Court was that it "would be unfair to impose liability on

---

[1]Appellants argued before the Industrial Commission that Idaho Code Section 72-439 was violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Although appellants claim in their brief before this Court that the Industrial Commission declined to rule on those issues, it should be noted that the Commission was precluded from ruling on issues of constitutionality. *Brock* v. *Boise*, 95 Idaho 630, 516 P.2d 189 (1973); *Wanke* v. *Ziebarth*, 69 Idaho 64, 202 P.2d 384 (1949).

employers for time-related diseases without imposing a corresponding time requirement on the employment relationship." The Court further noted that occupational disease compensation generally has lagged behind accident compensation and that there was the "fear that the heavy incidence of occupational disease would place an unbearable burden on the compensation system." Another legislative concern mentioned by the Court was whether "a problem as generalized and as extensive as occupational disease could be effectively dealt with under workmen's compensation." The Idaho Supreme Court upheld the validity of Idaho Code Section 72-439 since the statute reflected "a reasonable conceivable, legitimate public purpose."

VII.

REASONS FOR DISMISSING APPELLANTS' APPEAL ON THE GROUND THAT APPELLANTS HAVE NOT RAISED A SUBSTANTIAL FEDERAL QUESTION

A. The 60-day Exposure Requirement of Idaho Code Section 72-439 Does Not Create An Unreasonable Classification Violative of the Equal Protection Clause of the Fourteenth Amendment.

Appellants have attacked Idaho Code Section 72-439 as an unreasonable classification which violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Appellants claim the classification creates two classes of persons — a class of persons developing a *non*acute disease when exposed to a hazard for a period of 60

days or more and a class of persons developing a nonacute disease when exposed to a hazard for less than 60 days. Appellants argue that such classifications are unreasonable and arbitrary and violate the Equal Protection Clause. But appellants have raised no substantial federal question as the Idaho Supreme Court used the proper analysis mandated by this Court, and under such analysis the Idaho Court found the statute-in-question constitutional as there were rational bases for its existence.

The United States Supreme Court has consistently held with respect to social welfare programs, such as workmen's compensation,[2] that so long as the line drawn by the State is rationally supportable, the court will not impose its judgment. *Geduldig* v. *Aiello,* 417 U.S. 484, 495 (1974); *Schweiker* v. *Wilson,* 450 U.S. 221, 234 (1981). In *Schweiker* v. *Wilson, supra,* an issue arose as to whether Congress could decline to grant supplementary security income benefits to a class of otherwise eligible individuals who were excluded because they were institutionalized in public mental institutions that did not receive Medicaid funds for their care. 450 U.S. at 222. Citing *Lindsley* v. *Natural Carbonic Gas Co.,* 220 U.S. 61, 78 (1911), the Court employed the rational basis test which would allow for inequities so long as there was some rational basis for the legislation:

---

[2]Workmen's compensation laws are social welfare legislation. *See* Larson, *The Law of Workmen's Compensation* §§ 1-5, 96 (1982); *Mountain Timber Co.* v. *Washington,* 243 U.S. 219, 238-39 (1917).

> In the area of economics and social welfare, a state does not violate the Equal Protection Clause (and correspondingly the federal government does not violate the Equal Protection component of the Fifth Amendment) merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequity."

450 U.S. at 234. The Court noted that Congress had the rational basis of economic pragmatics for determining to cover some situations and not others. Commenting that government programs were of a limited nature, the Court noted:

> This inquiry (reasonable basis) employs a relatively relaxed standard reflecting the Court's awareness that the drawing of lines that create distinctions is peculiarly a legislative task and an unavoidable one. Perfection in making the necessary classifications is neither possible nor necessary.

450 U.S. at 234, *quoting Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307, 314 (1976). The Court stated that courts should grant a strong presumption of constitutionality to legislation conferring monetary benefits because a legislative body should have discretion in deciding how to "expend necessarily limited resources" and because "(a)warding this type of benefits inevitably involves the kind of line drawing that will leave some comparably needy

person outside the favored circle." 450 U.S. at 238. Thus, in *Schweiker* v. *Wilson*, this Honorable Court recognized, as did the Idaho Supreme Court in the cases at bar, that the allocation of limited funds in a state social welfare program is a legitimate and rational basis for line-drawing in legislation so as not to provide benefits to persons in certain situations.[3]

An analogous case to the cases at bar is that of *Geduldig* v. *Aiello, supra*, which involved the California disability insurance system under which employees contributed to the unemployment compensation disability fund. Under the California law, cer-

[3]In *Idaho Department of Employment* v. *Smith*, 434 U.S. 100 (1977), this Court recognized that a state has a legitimate right to define the parameters of its limited resources and held that an Idaho statute providing that "no person shall be deemed to be unemployed while attending a regularly established school excluding night school" did not violate the Equal Protection Clause by denying unemployment benefits to otherwise eligible persons who attend school during the day. The Court held that it was rational for the Idaho Legislature to conclude that daytime employment is far more plentiful than nighttime work and consequently that attending school in the daytime imposes a greater restriction upon obtaining full time employment than does attending night school. The Court recognized that a state may place such restrictions on economic benefits in light of its limited economic resources. Stated the Court:

> In a world of limited resources, a state may legitimately extend unemployment benefits only to those who are willing to maximize their employment potential by not restricting their availability during the day by attending school . . . The fact that the classification is imperfect and that the availability of some students desiring full time employment may not be substantially impaired by their attendance at daytime classes does not, under the cases cited *supra* render the statute invalid under the United States Constitution. [434 U.S. at 101-02.]

tain disabilities were not compensable. For example, disabilities lasting less than eight days were not compensable. Disabilities attributable to pregnancy were not compensable. In *Geduldig,* this Court applied the rational basis test and determined that the statute did not constitute an invidious discrimination violative of the Equal Protection Clause. The Court held that the program did not discriminate with respect to persons or groups eligible for its protection in that there was no evidence that it discriminated against any definable group or class. In *Geduldig,* the Court held that the mere fact that California chose not to cover certain risks was not a violation of the Equal Protection Clause. Stated the Court:

> The classification challenged in this case relates to the asserted underinclusiveness of the set of risks that the state has selected to insure. Although California has created a program to insure most risks of employment disability, it has chosen not to insure all such risks, and this decision is reflected in the level of annual contributions exacted from participating employees. This Court has held that, consistently with the Equal Protection Clause, a state "may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind . . . The legislature may select one phase of one field and apply a remedy there, neglecting the others . . ."

417 U.S. at 495, *quoting Williamson* v. *Lee Optical Co.,* 348 U.S. 483, 489 (1955). This Court went on to note that it would not determine where a state legislature should draw the lines with regard to its

spending on social welfare:

> Particularly with respect to social welfare programs, so long as the line drawn by the state is rationally supportable, the courts will not interpose their judgment as to the appropriate stopping point. "[T]he Equal Protection Clause does not require that the state must choose between attacking every aspect of a problem or not attacking the problem at all."

417 U.S. at 484, *quoting Dandridge* v. *Williams,* 397 U.S. 471, 486-87 (1970). The Court in *Geduldig* recognized that covering all risks in a disability insurance system might be financially burdensome for a state and that comprehensive coverage under a state system was not constitutionally mandated.[4] *Geduldig* is analogous to the case at bar. In *Geduldig,* the state of California disability insurance system had provisions excluding coverage for disability lasting less than eight days and provisions excluding coverage for pregnancy. In Idaho, the legislature has determined

---

[4]The Court recognized that a legislature's concern for its own limited resources could take precedence over its interest in a comprehensive social insurance program:

> It is evident that a totally comprehensive program would be substantially more costly than the present program and would inevitably require state subsidy, a higher rate of employee contribution, a lower scale of benefits for those suffering insured disabilities, or some combination of these measures. There is nothing in the Constitution, however, that requires the state to subordinate or compromise its legitimate interests solely to create a more comprehensive social insurance program than it already has.
>
> The state has a legitimate interest in maintaining the self-supporting nature of its insurance program. [417 U.S. at 495-96.]

that only persons suffering *non*acute occupational diseases who are exposed to a hazard for a period of more than 60 days will be covered. In *Geduldig* and the cases at bar, the state legislatures determined that all possible disabilities or occupational diseases would not be covered. In both, the courts recognized the legislatures had legitimate interests in protecting limited economic resources and in determining what social welfare matters would be covered. As noted by the Court in *Geduldig,* the mere fact that a person suffers a personal disability which is not covered by the state's plan is not sufficient to make a proper claim for denial of the Equal Protection Clause of the Fourteenth Amendment.[5]

---

[5]417 U.S. at 497. The mere fact that a person is not covered under a social welfare plan does not create a constitutional issue under the Equal Protection Clause worthy of being heard by this Honorable Court. In *Geduldig,* this Court stated with regard to the claimant:

> The appellee simply contends that, although she has received insurance protection equivalent to that provided all other participating employees, she has suffered discrimination because she encountered a risk that was outside the program's protection. For the reasons we have stated, we hold that this contention is not a valid one under the Equal Protection Clause of the Fourteenth Amendment. [*Id.*]

Similarly, in *Cleland* v. *National College of Business,* 435 U.S. 213 (1978), this Court held constitutional provisions of the GI Bill not allowing veteran educational assistance benefits if the veteran enrolled in a course in which more than 85 percent of the students were receiving financial assistance. The Court held that Congress had a rational basis to conclude that established courses with a substantial enrollment of nonsubsidized students were more likely to be quality courses. The Court in *Cleland* recognized that the statute would act to deprive some veterans of any access to education, but that such was not a violation of the

In addition to other legitimate state interests, the Court in *Weinberger* commented that the state has a legitimate interest in setting up prophylactic measures such as time requirements to make administrative determinations easier and more certain.[6]

Equal Protection Clause:

> Appellee contends that the challenged restrictions will completely deprive some veterans — those who live in areas where there are no programs which satisfy the two requirements — of veterans' educational assistance. While the restrictions on their face simply channel veterans toward courses which Congress has determined are more likely to be worthwhile, they may in fact operate to make benefits functionally unavailable to some veterans not living in close proximity to schools offering qualified programs and unwilling or unable to move to take advantage of the federal assistance. Nevertheless, the fact that Congress' judgment may deprive some veterans of the opportunity to take full advantage of the benefits made available to veterans by Congress is not a sufficient basis for greater judicial oversight of that judgment. [435 U.S. at 221 n.9.]

[6]In *Weinberger,* this Court noted that time period requirements in the area of social welfare benefits can serve a number of purposes:

> While it is possible to debate the wisdom of excluding legitimate claimants in order to discourage sham relationships, and of relying on a rule which may not exclude some obviously sham arrangements, we think that it is clear that Congress could rationally choose to adopt such a course. Large numbers of people are eligible for these programs and are potentially subject to inquiry as to the validity of their relationships to wage earners. These people include not only the classes which appellees represent, but also claimants in other programs for which the Social Security Act imposes duration of relationship requirements. Not only does the prophylactic approach thus obviate the necessity for large number of individualized determinations, but it also protects large numbers of claimants who satisfy the rule from

Thus, *Weinberger* stands for the proposition that statutory time periods which must be met in order for there to be coverage for certain social welfare benefits are not in and of themselves violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. As the Court noted in *Weinberger,* a legislature may use time limitation periods for a number of reasons, including the reason that such limitations make administrative determinations easier and more certain. In the case at bar, the 60-day statutory period eases the administrative burden of determining whether the nonacute occupational disease was primarily related to the employment of the particular employer.

Appellants appear to argue in their brief that if a state chooses to provide some social welfare benefits, it must cover all situations. But this Court has repeatedly rejected such contentions. In *Jefferson* v. *Hackney,* 406 U.S. 535 (1972), recipients of Aid to Families with Dependent Children (AFDC) challenged the Texas welfare system whereby Texas applied a percentage reduction factor to arrive at a reduced standard of need. AFDC argued that since the factor was lower for AFDC than for other categorical assistance programs, the system violated the Equal Protection Clause. In holding that this system did not

---

the uncertainties and delays of administrative inquiry into the circumstances of their marriages. Nor is it at all clear that individual determinations could effectively filter out sham arrangements, since neither marital intent, life expectancy, nor knowledge of terminal illness has been shown by appellees to be reliably determinable. [422 U.S. at 781-82.]

violate the Equal Protection Clause of the Fourteenth Amendment, this Court noted:

> A legislature may address a problem "one step at a time," or even "select one phase of one field and apply a remedy there, neglecting the others." *Williamson* v. *Lee Optical Co.,* 348 U.S. 483, 489 (1955). So long as its judgments are rational, and not invidious, the legislature's efforts to tackle the problems of the poor and the needy are not subject to a constitutional straight jacket. The very complexity of the problems suggests that there will be more than one constitutionally permissible method of solving it.

406 U.S. at 546-47.

As long as there is some rational basis for a state dispensing its funds on some social welfare concerns, but not others, the Court will not second guess the legislature.[7] In *Dandridge* v. *Williams,* 397 U.S. 471 (1970), the AFDC in another situation brought suit to enjoin the application of Maryland's maximum grant regulation as contravening the Equal Protection Clause of the Fourteenth Amendment. In *Dandridge,* the Court found that although the statute treated families differently, the state had great latitude in

---

[7]This Court on numerous occasions has expressed its reluctance to consider the wisdom of legislation on social welfare issues. For example, in *Richardson* v. *Belcher,* 404 U.S. 78 (1971), the Court upheld Section 224 of the Social Security Act which required a reduction in Social Security benefits to reflect workmen's compensation payments. The Court held that such a statutory provision did not violate the Equal Protection Clause of the United States Constitution. The Court in that case noted that Congress did have a rational basis for its legislation and that the Court would not substitute its judgment for Congress:

> We have no occasion, within our limited function under the Constitution, to consider whether the legitimate purposes of Congress might have been better served by applying the same offset to recipients of private insurance, or to judge for ourselves whether the apprehensions of Congress were justified by the facts. If the goals sought are legitimate, and the classification adopted is rationally related to the achievement of those goals, then the action of Congress is not so arbitrary to violate the due process clause of the Fifth Amendment. [404 U.S. at 84.]

Although there are few decisions by this Honorable Court applying the Equal Protection Clause to workmen's compensation laws, the Court has held it proper for a state legislature to cover certain risks and occupations but not others, under its workmen's compensation laws, and that such determinations are best left to the legislature. In *Lower Vein Co.* v. *Industrial Board*, 225 U.S. 144 (1921), an issue arose as to whether the Indiana legislature could compel coal companies to operate under the Employers Liability Act while leaving compliance as to other employers on a permissive basis. In finding such a law to be within the power of the legislature and not violative of the Equal Protection Clause, the Court commented that both the Employers Liability Act and the Workmen's Compensation Act differed in manner and effect, but that the legislature could exercise its judgment of what was necessary for the public welfare. This Court commented that the decision of the state legislature could not be pronounced arbitrary simply because it could be disputed and "opposed by argument in an opinion of serious strength." 255 U.S. at 151. Similarly, in *Middleton* v. *Texas Power & Light Co.*, 249 U.S. 152 (1918), the Texas Workmen's Compensation Act provided that an employer could come under the workmen's compensation act if it so decided. The act excluded certain laborers from its provisions. Stated the United States Supreme Court:

> There is a strong presumption that a legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds. The Equal Protection Clause does not require that state law shall cover the entire field of proper legislation in a single enactment. If one entertained the view

dispensing its available funds. This Court noted that it did not wish to intrude upon the decision of the legislature on matters of social and economic concern where there was a rational basis for the state's action:

> It is enough that the state's action be rationally based and free from invidious discrimination. The regulation before us meets that test.
>
> We do not decide today that the Maryland regulation is wise, that it best fulfills the relevant social and economic objectives that Maryland might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. The Constitution may impose certain procedural safeguards upon systems of welfare administration, *Goldberg* v. *Kelly, ante,* p. 254. But the Constitution does not empower this Court to second guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients.

397 U.S. at 487. As the foregoing discussion has indicated, this Court has applied the rational basis test to social welfare legislation such as Idaho Code Section 72-439. This test was employed by the Idaho Supreme Court which determined that the Idaho

---

that the act might as well have been extended to other classes of employment, this would not amount to a constitutional objection. [249 U.S. at 157-58.]

legislature had rational bases for its passage of the statute, one of which alone was sufficient, namely the legislature's concern for the allocation of the financial resources of its workmen's compensation system such that recovery for nonacute occupational diseases be kept within reasonable limits. In the case at bar, the Idaho Supreme Court noted the legislature's fear that covering all nonacute disease situations would result in an unbearable burden being placed on the compensation system, and that it would be unfair to impose on employers liability for time-related diseases without imposing a time requirement on the employer-and-employee relationship. This Court also made reference to the concern that a problem as generalized and extensive as that of occupational disease could not be effectively dealt with under workmen's compensation. Other rational reasons for the Idaho legislature's passage of the statute-in-question, not mentioned by the Idaho Supreme Court, relate to easing administrative decisions, weeding out false claims, and reducing uncertainty with regard to legitimate claims.[8] See *Weinberger* v. *Salfi, supra.*

Because there are numerous rational reasons for the Idaho legislature's passage of Idaho Code Section 72-439 and because of this Court's reluctance to second guess a legislature in a social welfare policy deci-

---

[8]Although such reasons were not mentioned by the Idaho Supreme Court, this Court has held that the fact that a statute discriminates in favor of a certain class does not make it arbitrary if any state of facts reasonably can be conceived to sustain it. *State Board of Tax Commissioners* v. *Jackson,* 283 U.S. 527 (1931); *Asbury Hospital* v. *Cass County,* 326 U.S. 207 (1945).

sion of this nature, it is respectfully submitted that appellants have presented no substantial federal question.

B. The 60-Day Exposure Requirement of Idaho Code Section 72-439 Does Not Create an Irrebuttable Presumption, But Even If It Did, the Statute Would Not Violate the Due Process Clause

Appellants have challenged the 60-day exposure requirement of Idaho Code Section 72-439 as being violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution by establishing an irrebuttable presumption.

The 60-day exposure requirement of the statute-in-question references no presumption, nor was it intended to create any presumption. Rather, the 60-day exposure requirement under Idaho Code Section 72-439 is simply a minimum time requirement the Idaho legislature has set as being necessary for the award of benefits for *non*acute occupational diseases under Idaho's workmen's compensation laws. Many statutes have a time requirement that must be met in order for benefits to be obtained, but such a requirement in itself does not create an irrebuttable presumption. The 60-day exposure rule reflects a policy determination by the Idaho legislature that benefits will not be awarded in *non*acute occupational disease cases unless the employee has been exposed to the hazard of the disease for 60 days. The time limitation in Idaho Code Section 72-439 is certainly a limitation, but it

has nothing to do with, nor does it create, an irrebuttable presumption.

But even if, for the sake of argument, Idaho Code Section 72-439 should be construed to create an "irrebuttable presumption," the statute would nonetheless not violate the Due Process Clause of the Fourteenth Amendment.

In *Weinberger* v. *Salfi, supra,* it will be recalled that provisions of the Social Security Act set forth a nine-month duration of marriage requirement as a precondition for survivor's benefits. In *Weinberger,* a widow challenged this requirement as being an irrebuttable presumption violative of the Equal Protection Clause of the Fourteenth Amendment. This Honorable Court held that the irrebuttable presumption did not violate the Equal Protection Clause. This Court distinguished its earlier decisions cited by the claimant involving irrebuttable presumptions by noting that such decisions involved issues of fundamental rights requiring a stricter type of scrutiny. In *Weinberger,* this Court noted it was not faced with a case where a fundamental right was involved, but rather it was faced with examining social welfare legislation. In *Weinberger,* the Court held that the proper standard for reviewing classifications in social welfare legislation under the Due Process Clause is the same standard to be used in examining the validity of social welfare legislation under the Equal Protection Clause. Accordingly, the Court employed the rational basis test in *Weinberger* v. *Salfi.* In refusing to apply anything more than the rational basis test to the case involving Social Securi-

ty benefits, the Court noted that to do otherwise would be to destroy countless legislative judgments in social welfare situations:

> We think that the district court's extension of the holdings of *Stanley, Vlandis* and *LaFleur* to the eligibility requirement at issue would turn the doctrine of those cases into a virtual engine of destruction for countless legislative judgments which heretofore have been thought wholly consistent with the Fifth and Fourteenth Amendments to the Constitution. For example, the very section of Title 42 which authorizes an action such as this, Section 45(g), requires that a claim be filed within 60 days after administrative remedies are exhausted. It is undisputable that this requirement places people who file their claims more than 60 days after exhaustion in a different "class" from people who file their claims within the time limit. If we were to follow the district court's analysis, we would first try to ascertain the Congressional "purpose" behind the provision, and probably would conclude that it was to prevent stale claims from being asserted in court. We would then turn to the questions of whether such a flat cut off provision was necessary to protect the secretary from stale claims, whether it would be possible to make individualized determinations as to any prejudice suffered by the secretary as a result of an untimely filing, and whether or not an individualized hearing on that issue should be required in each case. This would represent a degree of judicial involvement in a legislative function which we have eschewed except in the most unusual circumstances and which is quite unlike the judicial

> role mandated by *Dandridge, Belcher,* and *Nestor,* as well as by a host of cases arising from the legislative efforts to regulate private business enterprises.

422 U.S. at 772-73.

As noted in a previous section of this brief, the Idaho Supreme Court applied the rational basis test —the proper analysis — to Idaho Code Section 72-439 and determined that there were several rational reasons for the legislature adopting the 60-day exposure requirement of that statute. Appellants have presented this Court with no substantial federal question to merit review by this Court.

VIII.

CONCLUSION

Appellants have presented no substantial federal question worthy of consideration by this Honorable Court. The appellants have challenged Idaho Code Section 72-439 as being violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Idaho Supreme Court in examining the constitutionality of that statute employed the rational basis test to determine its validity. The United States Supreme Court has held on numerous occasions that the rational basis test is the appropriate standard for review for social welfare legislation. Although appellants claim there was no rational basis mentioned by the Idaho

Supreme Court for the legislation, the Idaho Supreme Court did in fact list several rational reasons for the legislature enacting Idaho Code Section 72-439. Appellants have raised no substantial federal question with regard to their first question.

As to appellants' second question relating to the alleged irrebuttable presumption, Idaho Code Section 72-439 creates no irrebuttable presumption. That section merely creates a time period which must be met before benefits will be paid. But even if the statute should somehow be construed to create an irrebuttable presumption, the statute would still be constitutional. As this Court has held in *Weinberger* v. *Salfi*, *supra*, in areas of social and economic welfare, the Court will apply the rational basis test to determine the validity of the legislation under the Due Process or Equal Protection clauses of the Constitution. The Idaho Supreme Court applied the rational basis test and found several rational bases for the Idaho Legislature's passage of Idaho Code Section 72-439. Appellants have raised no substantial federal question with regard to their second question.

Appellees respectfully request that Appellants' appeal be dismissed as they have raised no substantial federal question.

DATED this 24th day of July, 1985.

RESPECTFULLY SUBMITTED,

/s/

John W. Barrett

/s/

Donald D. Saint-Just
Moffatt, Thomas, Barrett
& Blanton, Chartered
First Security Bank Building
Post Office Box 829
Boise, Idaho 83701
(208) 345-2334

CERTIFICATE OF SERVICE

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

I, DONALD D. SAINT-JUST, a member of the bar of the United States Supreme Court, hereby certify that a copy of the foregoing APPELLEES' MOTION TO DISMISS ON THE GROUNDS THAT APPELLANTS HAVE NOT RAISED A SUBSTANTIAL FEDERAL QUESTION was served on the following people by depositing it in the United States Mail, with first class postage prepaid, on the 24th day of July, 1985:

Samuel Kaufman
ANDERSON, KAUFMAN, RINGERT
& CLARK
Post Office Box 2773
Boise, Idaho 83701

Paul S. Penland
LOJEK, PENLAND & MUNTHER
Post Office Box 199
Boise, Idaho 83701

Lynn M. Luker
GOICOECHEA LAW OFFICE, CHARTERED
701 West Franklin Street
Boise, Idaho 83701

/s/
Donald D. Saint-Just